

REMARKS

In response to the Restriction Requirement of the October 2, 2003 Office Action, Applicants provisionally elect the invention of Group I, claims 1-10, with traverse.

In making the restriction requirement, the Office Action asserts that inventions I (Claims 1-10), II (Claims 11-12) and III (Claims 13-14) are unrelated. In particular, the Office Action states that 1) the composition of Invention I (claims 1-10) does not require the active agent and can be used in food products; 2) the composition of Invention II (claims 11-12) requires active agent and can be used in drug delivery; and 3) the composition of Inventions III (Claims 13-14) is used for medical devices and does not require the active agent.

Applicants respectfully traverse. It has been long established that a requirement for restriction must not be made when subcombination is essential to combination. M.P.E.P. 806.05(c). The pertinent part of the MPEP recites: where the relationship between the claims is such that the separately claimed subcombination B constitutes the essential distinguishing feature of the combination AB as claimed, the inventions are not distinct and a requirement for restriction must not be made, even though the subcombination has separate utility. See, M.P.E.P. 806.05(c).

Applicants note that the claimed composition of Claims 1-10 (Invention I) is a subcombination essential to the composition of claims 11-12 or claims 13-14. The composition of Claims 11-12 (Invention II) is a combination of the subcombination and an active agent. The composition of Claims 13-14 (Invention III) is a combination of the subcombination and a use in medical devices. According to M.P.E.P. 806.05(c), Inventions I, II and III are not distinct and therefore the requirement for restriction must


not be made. Accordingly, Applicants respectfully request that the restriction requirement be withdrawn.

To expedite the prosecution of this application, Applicants provisionally elect Claims 1-10 for examination and provisionally withdraw Claims 11-14.

In view of the foregoing, it is submitted that the claims 1-10 are provisionally pending in the application and are in condition for allowance, and a Notice of Allowance is respectfully requested.

Respectfully submitted,  
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